

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Social Security
Field Hearing on Social Security Numbers and Child Identity Theft
Statement for the Record
James Tielebein
September 15, 2011

Thank you to the Subcommittee Chairman and members for the opportunity to share our family's experience concerning child identity theft by a family member by the means of this submission to the record.

My testimony is from personal experience as our family has dealt with child identity theft from 2007 to present and continues to do so. The role of the social security number in this crime was central. I consider the crime which affected me, our family, and my especially my stepdaughter, Gabriella, to be an emerging variety of identity theft. While this case may be defined as theft or identity theft, what happened to Gabbie is that her identity was used by another person to obtain benefits fraudulently.

Background and experience

I have background useful in my testimony, as I: 1) am a licensed private investigator in Iowa. I have been for six years. 2) am an Associate of the Heartland Chapter of the Association of Certified Fraud Examiners. 3) identity theft assistance training from the United States Department of Justice, Office for Victims of Crime. 4) identity theft training from the Economic Crime Institute, 5) work with intellectually challenged individuals who often rely upon proper administration of custodial accounts. 6) experience as a Sheriff Department employee. 7) managed inmate telephone systems for eight years and provided investigative information to county, state, and federal investigators professionally.

I have reported identity fraud to law enforcement previously. Earlier this year I provided information to the FBI regarding a case involving persons using multiple social security numbers to commit federal tax refund fraud. I provided the information to the FBI. It was my understanding that the FBI had no previous knowledge of these crimes. I provided to the FBI the tax refund Declaration Control Numbers involved as and the addresses used. I consider identity crime offensive: 1) as a serious crime against society 2) as well as a property crime when a fraudulent gain is intended. I see those aspects both in the fraudulent tax refund case, and in the crime committed against Gabriella.

This case of child identity theft by a family member

In our case, an offender opened a Uniform Transfers to Minors Act (UTMA) custodial account in the name of my stepdaughter, Gabriella, naming himself as the Custodian. UTMA accounts when properly titled and funded become the property of the minor under the act. A UTMA account is a fiduciary account in which the Custodian acts as a 'caretaker' of the account and the 'Beneficiary' is the owner of the account. Iowa Code 565B governs use and ownership of these accounts in Iowa. UTMA custodial account funds cannot usually be used to offset bankruptcy or other court obligations. This is because UTMA funds are owned by the Beneficiary. Any use of the funds must be for the benefit of the 'Beneficiary,' under well defined law regarding these accounts. UTMA funds must be reported on student financial aid applications.

The UTMA account was opened within a few months after the offender's own bank account was

seized through a 'levy against funds' in 2006. This bank levy was filed by the state Child Support Recovery Unit in Iowa. The person who used the social security number of Gabriella had been behind by child support in excess of \$5,000 when he started banking using her social security number with a bank account titled under her name. His success in concealing his income, and by banking under the name and social security of another person is evidenced by the fact that he is now more than \$10,000 behind on child support.

The person opening the UTMA account has 13 years of paralegal experience, has recent training in paralegal skills, and has a Bachelor of Arts degree in Psychology by his own admissions. His particular background infers greater than ordinary legal skills and his intent in creating the custodial account. He has made admissions that he has obtained benefits through the 'Iowa Care' program funded by Medicaid. He has made admissions to our attorney that he does not pay federal or state income tax.

Banking records obtained for the custodial account show that the offender used the account to process more than \$33,000 through the account during the first 18 months, and nearly \$55,000 in total. At times deposits of up to \$9,000 would be made, followed by nearly total withdrawal shortly after. Purchases were made for car licenses, liquor, cigarettes, and payment to the 'Iowa Judicial Branch.' These are not transactions that were for the 'benefit' of an eleven year old child. As the transactions were not for the benefit of Gabbie, the offender used her identity to obtain banking services in her name. The account was used only as a pass-through financial instrument by all appearances. When the account was closed out, only about \$50 remained, according to records obtained by subpoena.

The bank was notified of the account and we requested bank records for this account in the name of Gabriella. This request was as a request by Gabriella's parent, and on her behalf. Specific request for these bank records under Gabriella's name citing the identity theft provisions under 609e of the Fair Credit and Reporting Act (FCRA) was made. The bank refused. Eventually the banking records were obtained through court-ordered subpoena. Through these refusals by the bank, it became evident to me that Suspicious Activity Reports and Red Flag Rules were not effective in protecting Gabbie from victimization through identity theft.

Official response to child identity theft at times disheartening

Response from those not performing an actual investigation based on the evidence in our case can be described as disinterest or even "deliberate indifference." In an e-mail, I described to the Attorney General office how UTMA custodial accounts are governed by statute and are under the ownership of the minor, yet are under the fiduciary caretaking of the custodian. The reply from the Attorney General office indicated basic shortcomings in understanding of UTMA custodial account law. The quotes below are taken from the AG Office reply:

"... I am having difficulties making the connection as to how this constitutes Identity Theft. While ...In other words, I'm having difficulties finding where this individual broke the law, or stole her identity. "

"... If my understanding of your statements is correct, this may be why you've been having difficulties getting the police to investigate. While arguably morally wrong, I'm not sure that the individual in question has broken the law. .. If you do not agree with their decisions and believe there has been an egregious error, there are avenues to file complaints to that effect, which I noted in my prior email. This office; however, does not have the authority to force either entity to do what you would like them to."

Janelle Melohn

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Best practices by some officials were exhibited

On the other hand Leaders in law enforcement and Iowa government who have examined our evidence have encouraged us to press for further investigation. Those individuals include: 1) Iowa Senate Democratic Legislative Aide Cathy Engel, 2) State Senator Jack Hatch, 3) State Senator Swati Dandekar, 4) DCI Agent Gerard S. Meyers, 5) US Attorney's Office Coordinator Wade Kizner, 5) Senator Charles Grassley's office, and 6) retired FBI agent and fraud investigation trainer Alton Sizemore. Unfortunately, if local law enforcement will not ask for assistance, all these other resources cannot help. If police will not fill a crime report, then this fast growing crime will not find an adequate response, either nationally or locally. Neither will resources be allocated for that law enforcement response if reports are not made when credible report of crime is made.

Observations regarding this child identity theft case and other issues

The particulars of this case beyond the basic idea that a child should be protected by her government include:

- 1) Crimes against children are usually considered an enhancement of the crime.
- 2) Theft crimes that involve a violation of a position of trust. This is usually considered by law enforcement an enhancement of the crime.
- 3) The state of Iowa seems to be a party to the offense. The state Iowa Judicial Branch accepted payments from the offender, drawn upon the custodial account.
- 4) The Iowa governor's office and the Iowa Department of Human Services had been notified of the crime. Iowa DHS receives federal funds.

- 5) FBI and the US Attorney notified on various dates. No response.
- 6) Offender concealed income from the reach of child support. Arrears of \$11,000. He lost \$600 due to a bank levy for child support only a few months before opening the fraudulent Uniform Transfers to Minors Act (UTMA) account. Intent can be inferred.
- 7) Nonsupport is a felony under Iowa Code 726.5. This Aggravated Identity Theft was thus used to commit or conceal another felony - Nonsupport. This is a consideration for enhancement under 18 USC 1028A (c) (4 and 5.)
- 8) Deposits of \$9,000 and \$5,000 to the UTMA account were followed by withdrawals for the entire amount on the same or next day. Suspicious Activity Report events were evidently not triggered.
- 9) Offender has made admissions of obtaining food stamps and medicaid assistance. Fraudulently obtaining a benefit, per 18 USC 1028A. These programs operate with federal funding. Admissions made to an adverse attorney to the offender.
- 10) Offender has made admissions of failing to file federal or state income tax. Admissions made to an adverse attorney to the offender. Fraudulently obtaining a benefit, per 18 USC 1028A. Violation of Internal Revenue Service Code section 7209. Violation of Iowa Code 714.10.
- 11) Denial of federal civil and statutory consumer protections under FDIC Red Flag Rules. FDIC requires financial institutions have "Red Flags Rules to protect people from identity theft, under the Fair and Accurate Credit Transactions Act of 2003.
- 12) Denial of federal civil and statutory consumer protection through FCRA 609(e) request. A letter received from the attorney for the bank refused a FCRA 609(e) request. In the bank's refusal to provide information to an identity theft victim under FCRA 609(e), the attorney provided conflicting information. The bank attorney, on one hand, claimed that the account was a custodial account. On the other hand, the same letter said that all account transactions belonged only to the offender.
- 13) If not prosecuted, federal and state officials and law enforcement are permitting any and criminals to use instruments like the Uniform Transfers to Minors Act (UTMA) account to commit fraud. This puts in jeopardy the code itself. This code is a uniform act, adopted by virtually all states. Child support enforcement, bankruptcy courts, liens, and other judgments cannot reach the funds, because they are owned by the child per the plain language of the UTMA law. Iowa's version is Iowa Code 565B.
- 14) Offender makes admissions on his website that he has legal assistant training.
<http://imaginationtennis.usptapro.com/default.aspx/MenuItemID/351/MenuGroup/ProHome06.htm>

Aggravated Identity Theft is a felony crime. Aggravated Identity Theft is a violation of federal Law. The code is 18 USC 1028A. Simply put, it is a violation to use another person's identification, knowing it belonged to another person, to fraudulently obtain a benefit.

Defining a "fraudulently obtained benefit" is usually by plain language of the law. If an offender used the ID to obtain employment, that enables income. Income is money. Money is valuable. If it is valuable, then there is a benefit. This is how states and feds use this definition

in "Immigration" cases. Shouldn't law enforcement use the same language to protect a kid?

A brief list of our law enforcement contacts and results

2007 Information was discovered that Gabriella had a credit report. Dell Computer checked her creditworthiness in 2007 when she was 11.

2008 Iowa Governor office notified by email and phone calls of suspicions that offender was banking through Gabbie's name. The information provided by the Gov. office to Iowa Department of Human Services.

2008 Iowa Child Support Division will not follow up on info, says so in letter to Gabbie's mom.

2009 Info provided to FBI. FBI advises minimum dollar loss thresholds not met for this crime.

2009 Local US Attorney office, Iowa Northern District notified. Advises minimum dollar loss thresholds not met for this crime.

2009 Buchanan County law enforcement. Presented evidence in meeting with the Sheriff.

2009 Handed detailed, indexed, cataloged case book to Omaha FBI SA Robert Kardell.

2009 Contacted Iowa Legal Aid. Advised us child victim does not qualify for Legal Aid Assistance. Gabbie's mother makes just over the Legal Aid intake screening income level.

2009 US Attorney Southern District notified. Advises minimum dollar loss thresholds not met for this crime.

2010 Cedar Rapids Police Investigator John Mathias returns phone call to family. Does not assist.

2010 Gabbie's mother request bank records under Gabbie's name citing FCRA 609e. Bank refuses.

2010 Bank records subpoena sent. Challenged by offender. Ordered by court. Offender found to have been banking through name of Gabbie in a Uniform Gift to Minors account since 2006. Processed \$33,000 through account in first year and a half. About \$44,000 total.

2010 Linn County Asst. Co. Attorney Betcher does not return phone call.

2010 Iowa Attorney General Office, victim assistance advises return to Buchanan. Cites Iowa law where crime can be reported to offenders local police or to victim's local police. Offers to explain to Buchanan law enforcement.

2010 Iowa Civil Rights division. Advised office policy does not allow involvement. Apparent lack of protection of Gabbie.

2010 Info provided Mike Ferjak, ICAC Investigator, of Iowa Attorney General office conversation at DMAC Cybercrime Awareness Conference, Ankeny, IA.

2010 Conversation Mary Day, Iowa Senator Chuck Grassley office.

2010 Reported identity crime to Buchanan County Sheriff Dept. Incident number assigned was 10004089. Provided BCSD with sworn statement and evidence.

2010 Contacted Buchanan County Attorney Allan Vander Hart regarding status of case. Vander Hart referred victim to Linn County law enforcement and also said it was a civil matter.

2010 Detailed discussion with Special Agent In Charge Gerard Meyers, Iowa Department of Criminal Investigation, (DCI) Internet Crimes Against Children Task Force. Basis for the forwarded email.

2010 4 page written statement sworn to Buchanan County Sheriff Dept., Independence, IA. Provided total of seventeen new pages added to 5/10/2010 incident report #10004089. This in addition to bank statements for custodial account obtained by subpoena for years 2006 -2010. Informed BCSD that Cedar Rapids Police Dept. had referred us to BCSD on March 2010. Previous incident report showed case as inactive.

2010 Sent email to Agent Meyers, DCI. Follow-up up to hour long meeting with him.

2010 Phone call to U.S. Attorney, Victim Coordinator Shari Konarske.

2010 Offender publishes to internet admissions that he has legal assistant training. We feel it may indicate specific intent of banking under Gabbie's name.

2011 Letter delivered to US Sen. Chuck Grassley, Washington, D.C. 22. Advised follow-up would be through legislative staff Kathy Nuebel - Kovarek.

2011 Email with Cindy Robinson of Office of Inspector General, Legal Aid, D.C. On 5/26/2011, Ms. Robinson says she will follow-up. No follow up as of 7/30/2011.

2011 Advised in e-mail to Iowa Department on Aging, Program Director Linda Hildreth of possible case of custodial account fraud. I had attended seminar on financial exploitation and other abuse organized by Hildreth and presented by Jeff Clark, Linn County Asst. Attorney. Neither official returns the email.

2011 Contacts to Buchanan County, Iowa County Assistant Attorney Karl Moorman. Buchanan County, Iowa County Attorney Shawn Harden.

2011 Contacted Linn County Attorney Jerry Vander Sanden.

2011 Letter from Senator Chuck Grassley. We sign the consent form. Certified mail to US Senator Chuck Grassley.

2011 Referral from Sen. Grassley to US Attorney, Northern District.

2011 Meeting with Law Enforcement Coordinatory Wade Kizer, regarding the crime against Gabbie. Mr. Kizner refers the case to FBI office in Cedar Rapids, Iowa.

2011 Email reply from Janelle Melohn of the Iowa Attorney General Office. Ms. Melohn claims not to see aspects of theft or identity theft in the issue described.

2011 FBI Supervisory Senior Resident Agent Mike Kitsmiller phoned in follow-up.

Communicates that FBI will not follow up with investigation because the amounts involved in the theft of the custodial funds and identity theft are in the \$33,000 to \$55,000 range. It was communicated that FBI requires higher dollar losses to pursue. Also communicated was that family relationship of offender to victim could cause prosecution problems during trial.

Conclusion:

The solution I propose is: 1) law enforcement use the plain language of the law to prosecute these cases, just as they do with other types of crime, 2) That family relationship is not an exemption to prosecution, as with other offenses, and that 3) That existing laws be applied to criminal offenses.

Thank you again for this opportunity to share our experience with child identity theft with the Committee.